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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

*Match Group, LLC, et al. v. Google LLC,
et al.*, Case No. 3:22-cv-02746-JD

Case No. 3:21-md-02981-JD

**MATCH PLAINTIFFS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION TO DISMISS**

Date: September 8, 2022
Time: 10:00 a.m.
Judge: Hon. James Donato
Courtroom: 11, 19th Floor, 450 Golden Gate
Ave, San Francisco, CA 94104

REQUEST FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201, Plaintiffs and Counterclaim-Defendants Match Group, LLC; Humor Rainbow, Inc.; PlentyofFish Media ULC; and People Media, Inc. (collectively, Match Plaintiffs) by and through their counsel of record, respectfully request that this Court take judicial notice of each of the following documents attached as exhibits to the Declaration of William Larsen in Support of Match Plaintiffs' Motion to Dismiss.

1. An archived version of the Google Payments Policy dated July 29, 2016, and downloaded from the Internet Archive on July 27, 2022. A true and correct copy of that document is attached as **Exhibit 1** to the Larsen Declaration.

2. The Google Payments Policy as of July 27, 2022, downloaded from <https://support.google.com/googleplay/android-developer/answer/9858738>. A true and correct copy of that document is attached as **Exhibit 4** to the Larsen Declaration.

3. A Google website titled Understanding Google Play's Payments Policy, available online and downloaded August 1, 2022, from <https://support.google.com/googleplay/android-developer/answer/10281818>. A true and correct copy of that document is attached as **Exhibit 5** to the Larsen Declaration.

I. LEGAL STANDARD

A court may take judicial notice of adjudicative facts that are not subject to reasonable dispute when those facts are (1) "generally known within the trial court's territorial jurisdiction," or (2) "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(a)–(b). If a party requests it, the Court "must take judicial notice" if it is "supplied with the necessary information." *Id.* 201(c)(2).

II. ARGUMENT

Although the Court need not take judicial notice of the documents incorporated by reference into Google's counterclaims to consider them—*see, e.g., United States v. Ritchie*, 342 F.3d 903 (9th Cir. 2003)—three of the exhibits incorporated in Google's counterclaims (including Google's Payments Policy, which is published online) also meet the test for judicial notice set forth in Rule 201.

1 In seeking judicial notice of Exhibits 1, 4, and 5, Match Plaintiffs seek judicial notice of
 2 adjudicative facts that are not subject to reasonable dispute. “Adjudicative facts” are “facts about the
 3 parties or the issues to which the law is applied,” *Savage Logistics, LLC v. Savage Servs. Corp.*,
 4 No. CV-15-5015-EFS, 2015 WL 6141323, at *1 (E.D. Wash. Oct. 19, 2015) (citing Fed. R. Evid.
 5 201(a), Adv. Comm. Note to 1972 amendment). Here, Match Plaintiffs seek only to introduce
 6 Exhibits 1, 4, and 5 to show that Google’s publicly available written policy documents contained
 7 certain terms, and thus appropriately seeks judicial notice only for adjudicative facts not reasonably
 8 subject to dispute. *See, e.g., In re Restoration Robotics, Inc. Sec. Litig.*, 417 F. Supp. 3d 1242, 1253
 9 (N.D. Cal. 2019) (“publicly available documents” are “properly the subject of judicial notice” and are
 10 “routinely considered in deciding a motion to dismiss”; *see also Scott v. JPMorgan Chase Bank, N.A.*,
 11 214 Cal. App. 4th 743, 754 (2013) (appropriate under California law to take judicial notice of “legally
 12 operative” documents like contracts); *Datel Holdings Ltd. v. Microsoft Corp.*, 712 F. Supp. 2d 974,
 13 983 (N.D. Cal. 2010) (documents that were “publicly available online” and “relied on” in party’s
 14 complaint were proper subject of judicial notice). Indeed, Ninth Circuit district courts have taken
 15 judicial notice of “Google blog post[s]” similar to the Google Payments Policy posts referenced here.
 16 *In re Google Assistant Privacy Litig.*, 457 F. Supp. 3d 797, 813 (N.D. Cal. 2020).

17 Match Plaintiffs therefore request that the Court take judicial notice of the exhibits for the
 18 fact that the documents exist, that they say what they say, and that they accurately reflect the
 19 contents of Google’s Payments Policy and relevant web pages at the relevant times.

20
 21 Dated: August 1, 2022

HUESTON HENNIGAN LLP

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 23 By: /s/ Douglas J. Dixon

Douglas J. Dixon

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 25 *Attorneys for Plaintiffs Match Group, LLC;*
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 26 *ULC; and People Media, Inc.*